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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x
3 UNITED STATES OF AMERICA

4 v.

16 CR 396 (GHW)
Plea

5 KEVIN LEWIS

6 Defendant

-----x

7 New York, N.Y.
8 July 19, 2017
1:05 p.m.

9 Before:

10 HON. GREGORY H. WOODS

11 District Judge

12 APPEARANCES

13 JOON H. KIM

14 Acting United States Attorney for the
Southern District of New York

15 JASON SWERGOLD

Assistant United States Attorney

16 IRVING COHEN

17 Attorney for Defendant Lewis

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(In open court; case called)

MR. SWERGOLD: Good afternoon, your Honor. Jason Swergold for the government.

THE COURT: Thank you. Good afternoon.

MR. COHEN: Good afternoon, your Honor. Irving Cohen appearing for Mr. Lewis.

THE COURT: Good afternoon.

Good afternoon to you, Mr. Lewis. You can be seated.

MR. COHEN: Mr. Lewis is just in the process of signing the plea agreement, your Honor.

THE COURT: Thank you.

Mr. Lewis, I have been informed that you wish to plead guilty to a lesser included offense to Count One of the indictment that's numbered 16 CR 396. Is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: Thank you.

Before I accept your guilty plea, Mr. Lewis, I'm going to ask you a number of questions so that I can establish to my satisfaction that you wish to plead guilty because you are in fact guilty and not for some other reason, and also to ensure that you know what it is that you will be giving up if you choose to proceed and plead guilty.

If you don't understand any of my questions, or if you'd like to consult with your lawyer at any time for any reason, please just let me know, and I will be happy to give

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1 you as much time as you'd like to either confer with your
2 counsel or for me to clarify the responses of my questions to
3 you if it's helpful to you in responding.

4 First, Mr. Lewis, I'd like to ask you to please take
5 an oath to answer the questions that I'm going to be putting to
6 you here truthfully. Please stand.

7 (Defendant sworn)

8 THE COURT: Mr. Lewis, you are now under oath, which
9 means that if you answer any of my questions falsely, you can
10 be prosecuted for the separate crime of perjury or making false
11 statements. The government has the right to use any statements
12 that you give under oath against you in such a prosecution. Do
13 you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Thank you.

16 First, Mr. Lewis, can you please tell me your full
17 name.

18 THE DEFENDANT: Kevin Curtis Lewis.

19 THE COURT: How old are you?

20 THE DEFENDANT: 31.

21 THE COURT: Where were you born?

22 THE DEFENDANT: Bronx, New York.

23 THE COURT: Can you tell me how far you went in
24 school?

25 THE DEFENDANT: Ninth grade.

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1 THE COURT: Can you describe for me briefly, please,
2 your employment experience.

3 THE DEFENDANT: I only had one job in my life.

4 THE COURT: Thank you. What was that?

5 THE DEFENDANT: Construction.

6 THE COURT: Thank you.

7 Mr. Lewis, have you ever been treated or hospitalized
8 for any mental illness?

9 THE DEFENDANT: Yes.

10 THE COURT: Thank you. What was that?

11 THE DEFENDANT: Depression, nightmares, stuff like
12 that.

13 THE COURT: I'm sorry. Depression and what else?

14 THE DEFENDANT: Nightmares.

15 THE COURT: Thank you. How long ago was that that you
16 were treated?

17 THE DEFENDANT: 2015.

18 THE COURT: Thank you.

19 Can I ask, is that a condition that impacts your
20 ability to understand what's happening in this proceeding
21 today?

22 THE DEFENDANT: No, I understand.

23 THE COURT: Thank you.

24 Mr. Lewis, are you currently or have you recently been
25 under the care of a physician, psychiatrist or psychologist?

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1 THE DEFENDANT: No.

2 THE COURT: Are you currently or have you recently
3 been hospitalized or treated for drug addiction?

4 THE DEFENDANT: Been treated?

5 THE COURT: Yes.

6 THE DEFENDANT: You mean like in a program or
7 something?

8 THE COURT: Yes.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Thank you. Can you tell me when that was?

11 THE DEFENDANT: This year. I'm in a program right now
12 for drug treatment, and I completed one drug treatment program
13 while I was in MCC custody.

14 THE COURT: Thank you very much.

15 Can I ask whether any element of the treatment that
16 you've received or the condition that you were being treated
17 for has had any impact or has any impact on your ability to
18 understand what's happening in this proceeding?

19 THE DEFENDANT: I understand.

20 THE COURT: Thank you.

21 Within the past 24 hours, Mr. Lewis, have you used or
22 taken any alcohol, drugs or medication?

23 THE DEFENDANT: No, sir.

24 THE COURT: Is your mind clear today?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Do you understand what's happening in this
2 proceeding?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Have you received, Mr. Lewis, a copy of
5 the indictment that's pending against you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have you had enough of a chance to discuss
8 with your lawyer the case in general and, in particular, the
9 charge to which you intend to plead guilty and any possible
10 defenses to that charge?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Has your lawyer explained to you the
13 consequences of entering a plea of guilty?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you fully satisfied with your lawyer's
16 representation of you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Thank you very much.

19 Counsel, can I turn to you, please. Mr. Cohen, have
20 you discussed this matter with your client?

21 MR. COHEN: Yes, your Honor.

22 THE COURT: Is he capable of understanding the nature
23 of these proceedings?

24 MR. COHEN: Completely.

25 THE COURT: Thank you.

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1 Mr. Swergold, Mr. Cohen, do either of you have any
2 doubt as to the defendant's competence to plead at this time?

3 MR. SWERGOLD: No, your Honor.

4 MR. COHEN: No, your Honor.

5 THE COURT: Thank you.

6 On the basis of Mr. Lewis' responses to my questions,
7 my observations of his demeanor here in court, and the
8 representations of counsel, I find that Mr. Lewis is competent
9 to enter a plea of guilty at this time.

10 Now, Mr. Lewis, before we turn to your plea, I am
11 going to explain certain constitutional rights that you have.
12 I do this because these are rights that you will be giving up
13 if you choose to proceed and enter a guilty plea. Again,
14 please listen carefully to what I am about to say, and if you
15 don't understand anything, please don't hesitate to stop me,
16 and I or your counsel will explain the matter more fully.

17 First, Mr. Lewis, you have the right to plead not
18 guilty to the charge against you in the indictment. Do you
19 understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: If you did plead not guilty, you would be
22 entitled to a speedy and public trial by a jury on the charge
23 contained in the indictment against you.

24 THE DEFENDANT: Yes, sir, I understand.

25 THE COURT: Do you understand that? Thank you.

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1 At a trial, you would be presumed to be innocent, and
2 the government would be required to prove you guilty by
3 competent evidence beyond a reasonable doubt before you could
4 be found guilty. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: A jury of 12 people would have to agree
7 unanimously that you were guilty, and you would not have to
8 prove that you were innocent if you were to go to trial. Do
9 you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: At trial, and at every stage of your case,
12 you would be entitled to be represented by a lawyer. If you
13 could not afford a lawyer, one would be appointed for you at
14 public expense; that is, free of cost. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: During a trial, the witnesses for the
17 government would have to come to court and testify in your
18 presence, and your lawyer could cross-examine the government's
19 witnesses and object to evidence offered by the government. Do
20 you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: At trial, you would also have the
23 opportunity to offer evidence on your own behalf if you wished
24 to do so, and you would have the right to compel witnesses to
25 come to court to testify in your defense. Do you understand

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1 that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: At a trial, you would have the right to
4 testify if you chose to do so, but you would also have the
5 right not to testify; and if you decided not to testify, no
6 one, including the jury, could draw any inference or suggestion
7 of guilt from the fact that you did not testify. Do you
8 understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand, Mr. Lewis, that by
11 pleading guilty, you are giving up your right to seek
12 suppression or exclusion from any evidence against you that the
13 government may have obtained improperly?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: If you were convicted at a trial, you
16 would have the right to appeal that verdict. Do you understand
17 that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Even now, Mr. Lewis, as you are entering
20 this plea, you have the right to change your mind and plead not
21 guilty and go to trial on the charge against you contained in
22 the indictment. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: If you plead guilty, Mr. Lewis, you will
25 also give up your right not to incriminate yourself. I say

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1 that because I will ask you questions later during this
2 proceeding about what you did in order to satisfy myself that
3 you are guilty as charged, and you will have to admit and
4 acknowledge your guilt. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: If you plead guilty, Mr. Lewis, and if I
7 accept your plea, you will give up your right to a trial and
8 all the other rights that we have just discussed other than
9 your right to a lawyer which you have regardless of whether or
10 not you plead guilty. But there will be no trial, and I will
11 enter a judgment of guilty and sentence on the basis of your
12 plea.

13 There will be no appeal with respect to whether the
14 government could use the evidence that it has against you or
15 with respect to whether you did or did not commit this crime.
16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Thank you.

19 Mr. Lewis, we've just discussed a number of important
20 rights that you have. Do you understand each and every one of
21 those rights?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And are you willing to give up your right
24 to a trial and the other rights that I've just discussed with
25 you?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Thank you.

3 Mr. Lewis, I understand that you've received a copy of
4 the indictment containing the charge against you. Can I ask,
5 have you read the indictment?

6 THE DEFENDANT: Yes. Yes, sir.

7 THE COURT: Thank you.

8 Do you understand that in the indictment you are
9 charged with conspiracy to distribute and possess with intent
10 to distribute 280 grams or more of mixtures and substances
11 containing a detectable amount of cocaine base; that is, crack,
12 in connection with participation in a narcotics conspiracy from
13 in or about 2008 up to and including in or about 2016 in
14 violation of 21 U.S.C. Section 846. Do you understand that's
15 the charge against you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that, however, pursuant
18 to your agreement with the United States, you are pleading
19 guilty to the lesser included offense of conspiracy to
20 distribute and possess with intent to distribute mixtures and
21 substances containing a detectable amount of cocaine base in
22 connection with participation in a narcotics conspiracy from in
23 or about 2008 up to and including in or about 2016 in violation
24 of 21 U.S.C. Sections 841(b)(1)(C) and 846. Do you understand
25 that?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Thank you.

3 Mr. Swergold, can I ask you to please state the
4 elements of the offense in question.

5 MR. SWERGOLD: Yes, your Honor.

6 The elements of the lesser included offense in Count
7 One are as follows:

8 First, that two or more persons agreed or conspired to
9 distribute or possess with the intent to distribute one or more
10 controlled substances; specifically, in this case a quantity of
11 mixtures and substances containing a detectable amount of
12 cocaine base commonly referred to as crack cocaine.

13 Second, that the defendant was party to or a member of
14 the agreement or conspiracy.

15 Third, that the defendant joined the agreement or
16 conspiracy knowing of its objective and intended to join
17 together with at least one other alleged conspirator to achieve
18 that objective.

19 The government would also prove that venue is proper
20 in the Southern District of New York by a preponderance of the
21 evidence.

22 THE COURT: Thank you.

23 Mr. Lewis, do you understand that if you are to go to
24 trial for this offense, that the government would have to prove
25 all of the elements of the offense beyond a reasonable doubt?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Thank you.

3 Now, I'm going to tell you the maximum possible
4 penalty for the crime to which you are pleading guilty. The
5 maximum means the most that could possibly be imposed. It does
6 not mean that it is what you will necessarily receive; but you
7 have to understand that by pleading guilty, you are exposing
8 yourself to the possibility of receiving any combination of
9 punishments or penalties up to the maximum that I am about to
10 describe. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: First, I'm going to tell you about the
13 possible restrictions on your liberty.

14 The maximum term of imprisonment for this crime is 20
15 years, which could be followed by up to a lifetime term of
16 supervised release. If you are sentenced to a term of
17 supervised release, you will be subject to supervision by the
18 probation office. There will be rules of supervised release
19 that you will have to follow; and if you violate those rules,
20 you can be returned to prison without a jury trial to serve
21 additional time with no credit for time that you served in
22 prison as a result of your sentence and no time spent on post
23 release supervision.

24 You should understand, Mr. Lewis, that there is no
25 parole in the federal system; and that if you are sentenced to

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1 prison, you will not be released early on parole. Do you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Thank you.

5 Second, in addition to these restrictions on your
6 liberty, the maximum possible punishment also includes certain
7 financial penalties. The maximum allowable fine is \$1 million,
8 or twice the gross monetary gain derived from the offense, or
9 twice the gross monetary loss to persons other than yourself,
10 whichever is greater.

11 In addition, I can order restitution to any person or
12 entity injured as a result of your criminal conduct.

13 I can also order you to forfeit all property derived
14 from the offense or used to facilitate the offense.

15 And, finally, I must also order a mandatory special
16 assessment of \$100.

17 Mr. Lewis, in addition to understanding the maximum
18 punishment that can be imposed, you should understand that
19 there is a mandatory minimum penalty that attaches to the crime
20 to which you are intending to plead guilty. That means that
21 even if I wanted to, I would not be allowed to sentence you to
22 less than the minimum.

23 In this case, there is no mandatory minimum sentence
24 of incarceration, but there is a mandatory minimum sentence of
25 at least three years of supervised release.

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1 Counsel, do either of you wish to correct or amend any
2 of the penalties that I've just described before I proceed?

3 MR. SWERGOLD: No, your Honor.

4 MR. COHEN: No, your Honor.

5 THE COURT: Thank you.

6 Mr. Lewis, do you understand that these are the
7 maximum possible penalties?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you understand the mandatory
10 minimum sentence that applies in this case?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Thank you.

13 Mr. Lewis, do you understand that as a result of your
14 guilty plea, you may lose certain valuable civil rights to the
15 extent that you have them or could otherwise obtain them now,
16 such as the right to vote, the right to hold public office, the
17 right to serve on a jury, and the right to possess any kind of
18 firearm?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Lewis, are you serving any other
21 sentence, either state or federal, or to your knowledge are you
22 being prosecuted in state court for a state crime?

23 THE DEFENDANT: Serving a state sentence right now,
24 sir.

25 THE COURT: Thank you.

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1 You should understand, Mr. Lewis, that your state and
2 federal sentences could be consecutive, so that any sentence
3 imposed in this case could be added on at the end of any other
4 sentence that you have to serve. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand, Mr. Lewis, that if your
7 lawyer or anyone else has attempted to predict what your
8 sentence will be, that their prediction could be wrong?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand that the sentence
11 ultimately imposed may be different from any estimate that your
12 attorney may have given you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: That's good, because no one can give you
15 an assurance of what your sentence will be because I'm going to
16 decide your sentence, and I'm not going to do that now. Do you
17 understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Before I impose your sentence, Mr. Lewis,
20 I will review a presentence report that is prepared by the
21 probation department. You and your counsel and counsel for the
22 United States will have the opportunity to challenge the facts
23 that are reported in that presentence report and also the
24 application of the advisory Sentencing Guidelines that are
25 recommended by the probation officer. I'm obliged to do my own

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1 independent calculation of the advisory Sentencing Guidelines
2 range.

3 After your initial advisory guidelines range has been
4 determined, I have the authority in some circumstances to
5 depart upward or downward from that range. Ultimately, I'll
6 determine what a reasonable sentence is for you based on a
7 number of sentencing factors contained in the statute found at
8 18 U.S.C. Section 3553(a). That may result in the imposition
9 of a sentence that is either greater or lesser than the
10 advisory guidelines.

11 Do you understand all of that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you and your attorney discussed how
14 the advisory Sentencing Guidelines might apply in your case?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Thank you.

17 Mr. Lewis, even if your sentence is different from
18 what your lawyer or anyone else has told you it might be, even
19 if it is different from what you expect or from what's
20 contained in a written plea agreement entered into between you
21 and the government, you will still be bound by your guilty plea
22 and will not be allowed to withdraw your plea of guilty. Do
23 you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Thank you.

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1 Mr. Lewis, we've just discussed a number of important
2 possible consequences of your plea. Do you understand all of
3 those possible consequences?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Thank you.

6 I understand that there is a written plea agreement
7 entered into between you, Mr. Lewis, and your lawyer and the
8 lawyer for the government. Is that correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Thank you.

11 I have the original letter plea agreement dated July
12 18, 2017 to your lawyer, Mr. Cohen, from Assistant United
13 States Attorney, Jason Swergold. I'm going to mark this as
14 Court Exhibit 1 and will provide it to the government to retain
15 in its possession.

16 I'd like to ask you some questions about the agreement
17 though before I do, Mr. Lewis.

18 Before I turn to Mr. Lewis, however, counsel,
19 Mr. Swergold and Mr. Cohen, are there material differences
20 between the July 18 final letter and the March 22 draft of that
21 letter?

22 MR. SWERGOLD: The only difference, your Honor, is the
23 name of the narcotics unit chief who signed the plea agreement.

24 THE COURT: Thank you.

25 So, Mr. Lewis, drawing your attention to the plea

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1 agreement, can I ask, did you sign the original of the plea
2 agreement on the last page?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Did you do that today in the presence of
5 your lawyer?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did you read the agreement before you
8 signed it?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Did you discuss it with your lawyer before
11 you signed it?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Did you fully understand the agreement
14 before you signed it?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Thank you.

17 Now, Mr. Lewis, one of the features of your agreement
18 with the government is that you've agreed on the guideline
19 range that applies in this case. Is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You should know that agreement is binding
22 on you and it's binding on the government, but it's not binding
23 on me. As I told you earlier, I have my own independent
24 obligation to determine what the correct advisory Sentencing
25 Guidelines range is in your case and what the appropriate

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1 sentence is.

2 Now, I'm not saying that I'm going to come up with any
3 range that's different from the range that's contained in your
4 plea agreement, but you need to understand that if I do, I will
5 not let you withdraw your plea even if the range that I
6 determine is higher than the one you agree to with the
7 government. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Thank you.

10 Do you understand, Mr. Lewis, that under some
11 circumstances, you or the government may have the right to
12 appeal any sentence that I impose?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Thank you.

15 In your plea agreement, you've waived a number of
16 rights to appeal or otherwise challenge your conviction and
17 sentence. Among other things, you've agreed not to file a
18 direct appeal or to bring a collateral challenge, including,
19 but not limited to, an application under Title 28 U.S.C.
20 Sections 2255 or 2241 or to seek a sentence modification
21 pursuant to Title 18 U.S.C., Section 3582(c) of any sentence
22 that's within or below the stipulated guidelines range of 151
23 to 188 months imprisonment.

24 You have also agreed not to appeal any term of
25 supervised release that is less than or equal to the statutory

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1 maximum, and you've also agreed not to appeal any fine that is
2 less than or equal to \$1 million.

3 Furthermore, you've agreed not to appeal your
4 conviction or sentence or attack it collaterally on the basis
5 that the government has failed to produce any discovery
6 material, Jencks Act material, exculpatory material pursuant to
7 *Brady v. Maryland* other than information establishing the
8 factual innocence of the defendant, and impeachment material
9 pursuant to *Giglio v. United States* that has not already been
10 produced as of the date of the agreement.

11 Furthermore, although I understand that you are a
12 United States citizen, you've agreed not to appeal your
13 conviction or to challenge it collaterally on the basis of any
14 actual or perceived adverse immigration consequences.

15 So, Mr. Lewis, do you understand the rights to appeal
16 or challenge your conviction and sentence that you've waived in
17 your plea agreement?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Lewis, does this written plea
20 agreement constitute your complete and total understanding of
21 the entire agreement between you and the government?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Has anything been left out?

24 THE DEFENDANT: No, sir.

25 THE COURT: Other than what's written in this

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1 agreement, has anyone made any promise to you or offered you
2 any inducements to plead guilty or to sign the plea agreement?

3 THE DEFENDANT: No, sir.

4 THE COURT: Has anyone threatened you or forced you to
5 sign the plea agreement or plead guilty?

6 THE DEFENDANT: No, sir.

7 THE COURT: Has anyone made a promise to you as to
8 what your sentence will be?

9 THE DEFENDANT: No, sir.

10 THE COURT: Thank you.

11 Mr. Lewis, I told you earlier that I would turn to you
12 during this proceeding to ask you to tell me what it is that
13 you did that makes you believe that you are guilty of the
14 offense to which you intend to plead guilty.

15 Can you please tell me what it is that you did that
16 makes you believe you are guilty of this offense.

17 THE DEFENDANT: Yes, sir. From 2008 to the date of my
18 arrest, I agreed with others to distribute and possess with the
19 intent to distribute cocaine base, and on or about October 2009
20 I sold cocaine base to another person. This occurred in
21 Manhattan.

22 THE COURT: Thank you.

23 Mr. Lewis, when you did those things, did you know
24 what you were doing was wrong and illegal?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Thank you.

2 Mr. Cohen, do you know of any valid defense that would
3 prevail at trial or do you know of any reason why your client
4 should not be permitted to plead guilty?

5 MR. COHEN: No, your Honor.

6 THE COURT: Thank you.

7 Mr. Swergold, are there any additional questions that
8 you'd like me to ask Mr. Lewis?

9 MR. SWERGOLD: No, your Honor.

10 THE COURT: Thank you.

11 Mr. Swergold and Mr. Cohen, do both of you believe
12 that there is a sufficient factual predicate for a guilty plea?

13 MR. SWERGOLD: Yes, your Honor.

14 MR. COHEN: Yes, your Honor.

15 THE COURT: Thank you.

16 Do either of you know of any reason that I should not
17 accept the defendant's plea of guilty?

18 MR. SWERGOLD: No, your Honor.

19 MR. COHEN: No, your Honor.

20 THE COURT: Thank you very much.

21 Can I ask you to please stand now, Mr. Lewis. Thank
22 you.

23 (Complies)

24 THE COURT: Mr. Lewis, as we discussed, Count One
25 charges you with conspiracy to distribute and possess with

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1 intent to distribute 280 grams or more of mixtures and
2 substances containing a detectable amount of cocaine base in
3 connection with participation in a narcotics conspiracy from in
4 or about 2008 to up to and including in or about 2016, in
5 violation of 21 U.S.C., Section 846.

6 I understand that you wish to plead guilty to the
7 lesser included offense of conspiracy to distribute and possess
8 with intent to distribute mixtures and substances containing a
9 detectable amount of cocaine base; that is, crack in connection
10 with participation in a narcotics conspiracy from in or about
11 2008 to up to and including in or about 2016 in violation of 21
12 U.S.C., Section 841(b)(1)(C) and 846.

13 How do you plead to that offense?

14 THE DEFENDANT: Guilty.

15 THE COURT: Thank you.

16 Mr. Lewis, there's a forfeiture allegation with
17 respect to Count One of the indictment. Do you admit the
18 forfeiture allegations with respect to Count One of the
19 indictment?

20 (Defendant consults with counsel)

21 THE DEFENDANT: Yes.

22 THE COURT: Thank you. It is the finding of the Court
23 in this case that Mr. Lewis is fully competent and capable of
24 entering an informed plea; that Mr. Lewis is aware of the
25 nature of the charges and the consequences of the plea; and

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1 that the plea of guilty is a knowing and voluntary plea
2 supported by an independent basis in fact containing each of
3 the essential elements of the offense.

4 The plea is, therefore, accepted, and Mr. Lewis is now
5 adjudged guilty of that offense.

6 Thank you very much, Mr. Lewis. You can be seated.
7 Thank you.

8 So, Mr. Lewis, the probation department will want to
9 interview you in connection with a presentence report that I
10 will prepare.

11 Mr. Cohen, do you wish to be present for any interview
12 in connection with that report?

13 MR. COHEN: Yes, I do, your Honor.

14 Before you set a sentencing date, I'd like to say a
15 word.

16 THE COURT: Thank you.

17 I will order that no interview take place unless
18 counsel is present.

19 I am going to direct that the United States provide
20 the probation officer with its factual statement within seven
21 days.

22 Defense counsel, please arrange for Mr. Lewis to be
23 interviewed by the probation department within the next 14
24 days. We'll notify them that a PSR needs to be prepared.

25 Mr. Lewis, if you choose to speak to the probation

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1 department, please make sure that anything you choose to say is
2 truthful and accurate. A presentence report is a very
3 important document for me in deciding what the appropriate
4 sentence is. It's a document that I read and will read very
5 carefully.

6 I pause on this point briefly because you and your
7 counsel have the right to review that report and to comment on
8 it both before and at sentencing. So I want to urge you to
9 take advantage of that right and to review the report, and let
10 your counsel know if there are any errors in it or other issues
11 with it so that he can bring them to the attention of the
12 probation officer who's preparing the report, and ultimately
13 bring them to my attention at or about sentence.

14 Thank you.

15 So with that, Mr. Cohen, proceed.

16 MR. COHEN: Yes. For several reasons, your Honor, we
17 ask that you order an expedited sentence, hopefully sometime in
18 the second or third week of September, if possible.

19 The major reason is that Mr. Lewis is presently still
20 serving his state sentence, and it may impact upon the credit
21 he gets in connection with this case; and in order to expedite
22 it, your Honor, I will be away for a significant time in
23 August. I would also ask that your Honor allow me to use the
24 services of a mitigation expert that has previously been
25 appointed by other courts in this jurisdiction. If you say

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1 that you will allow that, I will prepare the appropriate -- I
2 will send you a letter or prepare one to that effect.

3 THE COURT: Thank you.

4 Let me address each of those requests in turn.

5 On the first request, I'd like to hear the view of the
6 United States. Is there a request for an expedited sentencing?

7 MR. SWERGOLD: Your Honor, I think that -- so the
8 first point that I would make is I believe that the defendant
9 is currently serving time in the state not for relevant conduct
10 in this case, and so I don't know what to extent it will have
11 an effect on his sentencing here. I don't believe it would
12 have any sort of mandatory effect under the guidelines.

13 It sounds like if there's going to be a mitigation
14 expert, that it might take a little longer to prepare for
15 sentencing anyway. It sounds like the government will have to
16 review a mitigation report that's prepared. That being said,
17 the government is perfectly willing to go along with whatever
18 schedule the Court thinks is appropriate in light of the facts
19 that Mr. Cohen has just raised.

20 THE COURT: Thank you.

21 MR. COHEN: Your Honor, if I might. I've already
22 spoken to the expert who is prepared to start working on this
23 as soon as possible. As I said, I'm going to be away most of
24 August, your Honor. I think it would actually be quicker if
25 the mitigation expert were appointed.

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1 As I said, I can't now discuss in detail or
2 intelligently all of the sentencing issues that relate to the
3 fact that Mr. Lewis is presently serving a sentence and has
4 served other sentences as well before this, but whatever issues
5 are raised will be addressed appropriately.

6 If you could set a date let's say for the week of
7 September 25, that would be good. And if you would accept the
8 request for the appointment of the mitigation expert, we would
9 appreciate it.

10 THE COURT: Now, let me hear more about the request
11 for an appointment of mitigation expert. I understand that you
12 will be away for a period of the summer.

13 Beyond that, what's the basis for the appointment of a
14 mitigation expert if you can tell me in open court.

15 MR. COHEN: This particular person, your Honor, is
16 prepared to go in depth into Mr. Lewis' background and also his
17 drug addiction problem that he's had. He's also prepared to
18 find employment for Mr. Lewis. And, in particular, I haven't
19 spoken to this woman yet, but this particular program that this
20 mitigation expert would be interested in having Mr. Lewis
21 participate in, so they have a certain expertise and certain
22 knowledge that I think would be very helpful to your Honor in
23 determining the appropriate sentence.

24 It would also, your Honor, since I wouldn't be doing
25 the bulk of the work necessarily, that it would save the

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1 government money because their hourly rate is less than the
2 rate of a CJA. So I think on all those reasons, it makes a lot
3 of sense in Mr. Lewis' case to have the services of a
4 mitigation expert.

5 THE COURT: Thank you. I can't commit on the basis of
6 that proffer to approve the appointment of a mitigation expert.
7 I am not at this point going to deny it either. But I would
8 want more, I will call it, justification for the appointment of
9 a mitigation expert, and I would be looking to have a clear
10 understanding of what it is that a mitigation expert would add
11 to the sentencing process beyond the work that counsel would
12 do.

13 It's not apparent to me from your proffer what
14 specifically requires a separate expert to chime in on, so I
15 can't commit at this point to appointing a mitigation expert.

16 I will allow you to submit a more detailed application
17 using the E-voucher system to support the request, but I'm not
18 going to grant the request at this time.

19 Does that make a difference for you in terms of the
20 scheduling, Mr. Cohen?

21 MR. COHEN: No, your Honor. I still want the sentence
22 to be expedited, so that if there is no mitigation expert, and
23 I end up doing it, as I usually do in every case, I'll make
24 sure it gets in on time so that we can expedite the sentence.

25 THE COURT: Thank you.

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1 MR. SWERGOLD: Your Honor, if I may, I heard Mr. Cohen
2 ask for the week of September 25.

3 THE COURT: Yes.

4 MR. SWERGOLD: As your Honor knows, we'll be on trial
5 at least as of now against some of the other defendants in this
6 case starting September 18, so perhaps if the Court is inclined
7 to do it that week, maybe just near the end of the week in case
8 the trial spills over.

9 THE COURT: Thank you.

10 THE DEPUTY CLERK: Counsel, how is Monday, October 2
11 at 2:00 p.m.

12 MR. COHEN: That's fine. What time?

13 THE DEPUTY CLERK: 2:00 p.m.

14 THE COURT: Mr. Swergold, does that work for you as
15 well?

16 MR. SWERGOLD: Yes, it does. Thank you. Your Honor.

17 THE COURT: Good. Thank you.

18 So sentencing will take place at that date and time.
19 Mr. Cohen, if you would like to make an application for
20 appointment of a mitigation expert, please do so using the
21 E-voucher system, and please include -- I think the system will
22 require you to include it, but include a memorandum in your
23 application that describes in particular the basis for the
24 appointment of a mitigation expert.

25 I'm focused, as you can tell, in part on what the

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1 marginal utility is for a mitigation expert in addition to the
2 work that you would usually do in a case such as this. If you
3 put that in in the near future, I'm likely to see it sooner
4 than later.

5 Good. Is there anything else that we should discuss
6 before we adjourn?

7 MR. SWERGOLD: Not from the government.

8 THE COURT: Thank you.

9 Mr. Cohen.

10 MR. COHEN: No. Thank you, your Honor.

11 THE COURT: Good. Thank you. Thank you all.

12 Good afternoon, Mr. Lewis.

13 This proceeding is adjourned.

14 (Adjourned)